No. 17425

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 340, AFL–CIO, RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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AUTHORITIES CITED

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JURISDICTION

This case is before the Court on petition of the National Labor Relations Board to enforce its order (R. 38–42)[1] issued against respondent on April 29, 1961, following the usual proceedings under Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, *et seq.*).[2] The Board's decision and order (R. 33–42) are

[1] References to portions of the printed record are designated "R". Whenever a semicolon appears, the references preceeding the semicolon are to the Board's findings; those succeeding are to the supporting evidence.

[2] The pertinent statutory provisions are reprinted *infra*, pp. 19–21.

reported at 131 N.L.R.B. No. 40. This Court has jurisdiction of the proceedings, the unfair labor practices having occurred at Chico, California, within this judicial circuit. No jurisdictional issue is presented (R. 4–5; 43–44).

STATEMENT OF THE CASE

I. The Board's findings of fact

Briefly stated, the Board found that respondent Local 340 (sometimes referred to herein as the Union), violated Section 8(b) (2) and (1)(A) of the Act by discriminatorily refusing to refer Jack L. Wood for employment with the Walsh Construction Company. The facts upon which the Board based its finding may be summarized as follows:

A. The discriminatory refusal to refer Wood

Respondent Local 340 represents employees in the Sacramento Valley area who are primarily skilled in the installation of wiring in connection with construction work, and is known in union parlance, therefore, as a "wireman's" local (R. 6; 103). At all times material herein, respondent has maintained a collective bargaining agreement with the Sacramento Valley Chapter of the National Electrical Contractors' Association, NECA, of which Walsh Construction Company is a member (R. 5–6; 44). Under the terms of this agreement the Union serves as the exclusive source of referrals for employment, and it maintains several hiring halls in the valley for this purpose (R. 6; 45–46).

The Walsh Construction Company, while utilizing mainly construction wiremen such as are provided by

respondent, also requires the services of electricians who are skilled in the maintenance and repair of DC batteries, battery switch gears, and battery operated mine locomotives, which the Company stores at its rail yards in Oroville, California (R. 9; 54–56).

Jack L. Wood, the charging party herein, was very familiar with this type of equipment (R. 10; 67–69). In May 1957 he happened to meet Rudolph C. Shulz, superintendent of Walsh's Oroville yard, and engaged him in a conversation concerning the various machinery stored there (R. 10; 69–70). Shulz told Wood that he needed a man with Wood's experience, and offered to hire him if he could obtain clearance from the Union [3] (R. 10; 70).

Wood, although affiliated with the I.B.E.W., was a member of Local 800, a so-called "railroad" local, whose members are primarily skilled in the repair and maintenance of heavy duty electrical equipment such as that owned by Walsh (R. 9–10; 69, 103). Wood obtained a clearance from respondent, and worked for Walsh until December 1958, when he was laid off (R. 10; 70).

After his layoff Wood reported to respondent's Chico, California, hiring hall seeking new employment (R. 10; 71). There he spoke to Business Manager Campbell, who asked Wood with what local he was affiliated (R. 35; 99–100). When Wood replied Local 800, Campbell said, "That is bad," and told Wood that he should not work out of a "wireman's" local

[3] An earlier collective bargaining agreement was then in effect (R. 10).

(*ibid.*). Campbell permitted Wood to register in the "traveler's" book, however, on the understanding that "members," i.e., members of Local 340, would be dispatched first (R. 10; 71–72). Later in the month Wood was dispatched to the firm of Wismer & Becker where he worked as a tunnel electrical foreman (R. 11; 72).

While on the Wismer job Wood attempted to join Local 340. He submitted his traveler's card and an application for membership, claiming completion of the two years' experience requirement to the Union's executive committee (R. 11; 72–73). About three months later, however, his card was returned to him with a statement that his application had been rejected (*ibid.*). The Union gave no reason for the rejection (*ibid.*). Also while on the Wismer job, Wood had a dispute with Galvin, one of respondent's business agents. During the argument Galvin stated to Wood that it was his (Galvin's) duty to protect the members of Local 340, and said to Wood, "Why don't you go back to where you came from?" (R. 35; 74–75). Wood nevertheless remained on that job until December 1959, when he quit for personal reasons (R. 15–16; 73).

On December 23, 1959, Wood again reported to respondent's Chico hiring hall seeking work (R. 16; 75–76). The collective bargaining agreement involved in the instant case had gone into effect by this time (R. 5–6; 44, 116). This agreement created a detailed classification system governing the order of dispatch of applicants for employment (R. 6–8; 46–50). In brief, the agreement provided that all applicants be

classified into five groups based upon the following factors: experience in the type of work covered by the agreement, passage of an examination, residency in the area, and length of employment under the agreement (*ibid.*). To be placed in group 1 an applicant had to satisfy the maximum requirements set out by the agreement as to each of these factors (*ibid.*). With each succeeding group the qualifications are less stringent than those of the preceding group, however, dispatch to available work is on the basis of group classification so that applicants in a lower numbered group enjoy preference over all applicants in higher numbered groups (*ibid.*). The order of referral within the group is based upon the date of the applicant's registration as available for work, so that the person with the earliest registration date will be referred first in his group (*ibid.*). The only exception to this system relates to the referral of employees in response to an employer's request for a man with special skills (R. 7–8; 50). In this regard Article IX, Sec. 4c, of the agreement provides (*ibid.*):

> When the Employer states *bona fide* requirements for *special skills* and *abilities* in his requests for application, the Business Manager *shall refer* the *first applicant* on the *referral list possessing such skills and abilities.*
>
> The Business Manager, when referring applicants with special skills shall take into consideration the applicant's *own estimate* of his ability to perform the work requiring such special skills, the applicant's *record* of *experience* on such work and the Business Manager's

> knowledge, if any, of the *estimate* which contractors have made of the applicant's *skills* and *abilities* to perform such work. (Emphasis added.)

When registering Wood on December 23, Hamilton asked him what local he belonged to (R. 16; 76). Wood replied Local 800, but noted that he had worked for both Wismer and Walsh (R. 16; 76–77). Hamilton registered Wood in Group III[4] (R. 16; 51). Thereafter, Wood reported to the hiring hall on the average of twice a week (R. 16–17; 77).

On January 5, 1960, Walsh began requesting men skilled in lead burning, welding and DC battery repair under the special skills provisions of the collective bargaining agreement (R. 12; 58–59). Through the month of January respondent did not dispatch anyone to Walsh although Wood was available for work and possessed the necessary skills.[5] (R. 12–13; 77, 79, 82). On February 5, Wood made certain that the Union

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[4] On February 5 Hamilton told Wood that it was a mistake to have registered him in Group III, and required him to re-register in Group IV (R. 18; 51, 84).

[5] During January Wood's efforts to obtain work and get a better classification under the group system were frustrated by union red tape and obstructionism. Thus, about two weeks after Hamilton registered him in Group III, Wood learned from a fellow electrician that he had to give written notice of availability to Hamilton to get work (R. 17; 77). When Wood asked Hamilton about this Hamilton said that he knew Wood was looking for work and that a post card would be sufficient (*ibid.*). Hamilton neglected to tell Wood, however, that he was also required to sign a dispatch book, and Wood, ignorant of these procedures, failed to do so (*ibid.*). Also at this time the Union offered its qualifying examination for classification in Group I. Wood told Hamilton that he was interested in taking the exam, but was forced to contact a member of NECA to learn when the examination was to be given (R. 17; 78–79).

knew that he possessed the special skills needed for the Walsh job by stating on his dispatch slip that he could do lead burning, welding and DC battery repair work, etc. (R. 18; 81–82). That same day, however, Hamilton dispatched a union member named Olds to Walsh, although Olds had just registered as available for work (R. 12–13; 52). Shulz rejected Olds when he conceded that he did not have the necessary qualifications for the job (R. 12–13; 60).

A week later respondent dispatched Ward (R. 13; 58–59). Ward, who was Shulz' son-in-law, had been requested by name on January 15 (R. 12; 59). At that time the Union told Shulz that Ward would have to sign the book (R. 12). Ward actually signed, however, about a month later than Wood (R. 12; 52). When Wood asked Ward why he had been dispatched first in view of his earlier registration Ward replied that Wood had not "verified" (R. 18; 94–95). Thereafter, Wood verified by initialing the dispatch book (*ibid.*).

Two weeks after the Union referred Ward, Shulz requested another employee. This request was open until March 18. On that date Wood spoke to Hamilton about the job and asked "How about me" (R. 19; 82). Although the opening was a matter of common knowledge at the hiring hall, Hamilton replied that he did not know anything about it (*ibid.*). However, a few

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Respondent never informed Wood of the results of the examination, and respondent's business manager Campbell testified that he was deemed ineligible to take the examination (R. 36; 127). Experience gained while in a "railroad" local was not considered relevant so far as a "wireman's" local was concerned (R. 36; 128).

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minutes later Wood met another electrician named Wheeler, a member of a "wireman's" local, and told him about the Walsh opening (R. 19; 82–83). Wheeler went in to speak to Hamilton, and after several minutes came out of the hall accompanied by Hamilton (R. 19; 83). As they passed by Wood, Wheeler waved a clearance slip at him (*ibid.*). Then Hamilton and Wheeler got into a car and drove out to the Oroville yard (*ibid.*). Wood followed in his car. At the yard Wood walked up to the place where Shulz, Wheeler and Hamilton were talking and asked Shulz if two men were needed (*ibid.*). Shulz said no. Wheeler then handed Shulz his dispatch card, and after Shulz interviewed him regarding his qualifications Wheeler was employed (R. 19; 61–62).

After the foregoing occurrence Wood asked Hamilton about the Walsh job every week when he went to the hall to sign the book (R. 19; 83–84). Usually Hamilton replied that he did not know anything about it (R. 20; 84). Shulz had in fact requested another man about two weeks after hiring Wheeler, and the Union had referred two more men (R. 14–15; 52–53, 62–65). One of these was dismissed after a half day trial, and the second rejected after an interview (R. 14–15; 64–65). Wood was never referred.

B. Wood's protest to the appeals committee

Twice Wood availed himself of the appeals procedures set forth in the agreement to seek review of Hamilton's treatment of him (R. 23; 87–88). The first of these appeals concerned Hamilton's reclassification of Wood from Group III to Group IV (R. 23). Since the question of Wood's group classifica-

tion is not in issue here (see pp. 16–17, *infra*), the facts relating to this appeal are not relevant.

Wood's second appeal concerned Hamilton's dispatch of Wheeler rather than himself to the Walsh job (R. 23; 87–88). Although the Committee sustained Hamilton's decision, it is not clear from the minutes whether they did so on the basis of Wood's right to the job under the group system or whether he had the necessary skills under the special skills provisions of the contract (R. 37; 144–146). The Committee appears to have been primarily concerned with the first issue (*ibid.*). As far as the second possibility is concerned respondent concedes that Wood possessed the necessary skills (R. 37; 125). In any event Wood himself was not invited to attend the hearing or present his side of the case to the Committee (R. 37; 100).

II. The Board's conclusions and order

On the basis of the foregoing evidence the Board concluded that respondent Union refused to refer Jack L. Wood for employment at Walsh Construction Company because he was not a member of a "wireman's" local, thereby violating Section 8(b) (2) and (1)(A) of the Act.[6] The Board ordered respondent to cease and desist from the unfair labor practices found, and to make Wood whole for any loss of pay he may have suffered as a result of respondent's discrimination against him (R. 38–40).

[6] The Board fixed the date of the first discrimination against Wood as February 12, 1960, as the record establishes that the Union knew of Wood's special skills no later than that date (R. 27, 37).

ARGUMENT

The Board properly found that respondent union violated Section 8(b)(2) and (1)(A) by discriminatorily refusing to refer Jack Wood to employment at Walsh Construction Company

Introduction

Section 8(b)(2) of the Act is explicitly directed at the elimination of improper union interference with employee job opportunities. Thus, that section, in relevant part, forbids "a labor organization or its agents * * * to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3)." The latter subsection, with qualifications immaterial here, forbids employer "discrimination in regard to hire or tenure of employment to encourage or discourage membership in any labor organization." By these interlaced provisions, Congress has forbidden union interference with jobs where it is shown first, that a union has attempted to cause or succeeded in causing an employer to discriminate, and secondly, that such discrimination tends to encourage or discourage union membership. See *Radio Officers' Union* v. *N.L.R.B.,* 347 U.S. 17, 42–43; *Local 357, Teamsters* v. *N.L.R.B.,* 365 U.S. 667. There is no issue here as to the first element of an 8(b)(2) violation, for Wood's failure to be employed by Walsh was admittedly "caused" by the Union's refusal to refer him. We show below that the second essential component of Section 8(b)(2) has also been established in this case. We also show that the Board properly rejected a determination by an "appeals committee" as binding upon it.

A. *The record supports the Board's conclusion that respondent union refused to refer Wood to Walsh because of his lack of membership in the union*

Wood, the charging party herein, was a member of Local 800, I.B.E.W., whose members were primarily skilled in the maintenance and repair of heavy electrical equipment—principally locomotives. Local 800 is known as a "railroad local." Respondent Local 340 is also affiliated with I.B.E.W. Its members are primarily skilled in the installation and maintenance of wiring used in construction—it is known as a "wireman's local." Respondent was a party to a contract with Sacramento Valley Chapter, National Electrical Contractors Association, of which Walsh was a member, and respondent pursuant to this agreement served as the exclusive wiring agent for Walsh. In the operation of this agreement, respondent generally rated job applicants in its hiring hall by reference to their wireman's experience. This system resulted in a preference being given in available employment to wiremen, and accordingly to employees who had worked under an agreement administered by respondent. With respect to job referrals generally then, Wood's railroad background placed him at a disadvantage. Walsh, although utilizing in the main employees skilled in wiring installations, also required some electricians experienced in heavy equipment work, including the repairs and maintenance of mine locomotives, battery switch gears, large DC batteries and transformers. Apparently to take care of this type of situation the contract between the Association and respondent contained a "special skills" provision

under which respondent agreed to refer men outside the regular system when an employer requested an electrician with special skills other than those normally possessed by respondent's members. Under the special skills provision of the agreement, Wood's membership in a "railroad local" was no handicap to his obtaining a job, for this part of the agreement required only that the applicant be the first man on the list possessing the requested skills in order to be referred.

It was respondent's failure to refer Wood to a job at Walsh, despite a request by Walsh for a man possessing Wood's special skills, that constituted the violation of the Act here involved. The Board found in all the circumstances that respondent's refusal to refer Wood to that job was discriminatorily motivated.

The circumstances of Wood's first attempts to get work through respondent's hiring hall, as well as the particular circumstances of respondent's refusal to refer him to Walsh, fully support the Board's conclusion in this respect. Thus, when Wood first came to respondent's hiring hall in December 1958, respondent's business manager, Campbell, asked Wood what local he was from. When Wood replied "Local 800," Campbell said, "that is bad," and added that Wood should not work in a construction local—such as Local 340. In November 1959, Wood had a dispute with Galvin, one of respondent's business representatives. The latter told Wood, "why don't you go back to where you came from?" At about this time respondent also rejected without explanation Wood's travelling card from Local 800. Again, in January 1960, when Wood took Local 340's examination to

qualify himself for a higher grouping under respondent's referral system (aside from the "special skills" provision), respondent never notified him of the results. According to respondent's business manager, Wood was not even eligible to take the examination because his work under a railroad local's jurisdiction was not considered relevant experience. These circumstances demonstrate respondent's extreme reluctance to refer Wood, as a member of a railroad local, to jobs within respondent's contractual jurisdiction.

On December 23, 1959, Wood registered at the Union's hiring hall and he continued to return to the hall several times a week during the next few weeks seeking employment. Starting about January 5, 1960, Walsh began to request employees from the Union pursuant to the special skills provision of the contract. On February 5, 1960, respondent dispatched a union member named Olds to Walsh pursuant to the special skills agreement, although Olds had registered as out of work only that day, whereas Wood had registered 2 weeks earlier. A week later, respondent referred employee Ward to the Walsh job. Ward, who was the son-in-law of Walsh's electrical superintendent, Shulz, had been requested by name by the Company on January 5. At that time, the Union told Shulz that Ward would have to sign the book. Ward actually registered in the union hall on January 22, 1960, a month after Wood registered. About February 26, Shulz again called respondent's hiring hall and asked for another man with the same special skills. Wheeler, who registered at the hall

March 11, 1960, was sent to the job on March 18. On subsequent occasions Walsh requested a special skills man and each time the Union sent someone who registered with the Union long after Wood. The second of these employees, McAdams, was rejected by Shulz.

During this period, Wood took pains to let the Union know he possessed the type of special skills in the various Walsh jobs. Yet on March 18, 1960, for example, when Wood mentioned to Business Agent Hamilton, "I think there is a job open at Walsh's for a man with special skills. How about me?" Hamilton replied, "I don't know anything about it." The evidence shows that Walsh's needs for men with special skills in lead burning, wiring, DC battery repairing, etc., were openly talked about at the union hall, and indeed continuing requests for such men had been made to the Union. There is no question but that Wood possessed these special skills, and the evidence plainly shows respondent knew, at least by February 12, 1960, that Wood did possess them. Thus, on each occasion that Walsh asked for a man with special skills, the Union bypassed Wood in favor of someone who had registered as out of work later than Wood, despite the fact that the contract special skills provision required that the first qualified man on the list was to be referred. On several occasions, respondent delayed sending anyone until someone other than Wood had registered, thus refusing to refer Wood even when he was the only qualified man on the list.

In all these circumstances, particularly in the light of the background of statements by Union officials to

Wood with respect to his membership in a "railroad local," the Board was fully justified in concluding that that membership was the motivating factor in respondent's refusal to refer Wood to the special skills jobs at Walsh. A refusal to refer based even in part on the fact that Wood was a member of the wrong kind of local plainly violated the proscriptions of Section 8(b)(2) and Section 8(b)(1)(A) of the Act. *N.L.R.B.* v. *Heat & Frost Insulators,* 261 F. 2d 347, 350 (C.A. 1); *N.L.R.B.* v. *Local 10, I.L.W.U.,* 214 F. 2d 778, 781 (C.A. 9); *N.L.R.B.* v. *Local 542, I.U.E.,* 255 F. 2d 703 (C.A. 3).

Before the Board, respondent argued that the basic reason for refusing to refer Wood was its belief that Walsh was attempting to bypass the referral procedure in the contract by the repeated requests for a man with particular skills and abilities. The facts, however, belie this assertion. For, had respondent really been concerned about the bona fides of Walsh's requests, it could scarcely have sent men to Walsh on each occasion someone with special skills was requested. Nor, in all the circumstances, does respondent's contention that it believed Walsh's requests were a subterfuge for obtaining a particular individual, i.e., Wood, militate against the board's conclusion. For when Ward, Shulz's son-in-law, was requested by name under the special skills provision of the contract, respondent referred Ward after he signed the out of work register. Indeed, as respondent's business manager, Campbell, admitted, Walsh was "the type of Company that we seldom have agreements with,"

because few members of Local 340 could perform the specialized work at Walsh's Oroville Yard operations. It was therefore evident that Walsh, to secure qualified help, perforce had to obtain employees under the special skills provision of the contract; it could not use ordinary wiremen to fulfill those needs. This factor comports then with respondent's having sent men to Walsh as requested, even though the men sent were not at the top of the regular list but were referred as special skills men. Finally, respondent never indicated to Walsh in any fashion that Walsh was abusing the special skills provision of the contract. In all these circumstances, respondent's later position in this respect was a manifest afterthought which the Board could fairly reject.

B. *The Board properly refused to honor the decision of the appeals committee*

As noted in the statement, Wood twice availed himself of the appeals procedure established in the contract, on the first occasion appealing only the Union's failure to place him in a higher classification group, and on the second appealing the dispatch of Wheeler rather than himself to the Walsh job. On each occasion the Appeals Committee ruled against Wood. The first decision of the Appeals Committee is not relevant here, for the discrimination against Wood had nothing to do with his placement on the regular list of the Union pursuant to its regular referral procedures. As to the second, as the Board found, "Wood was not invited to appear or to give evidence as to his side of the controversy" (R. 23). Furthermore, although the record shows that the Appeals Committee was pri-

marily concerned with whether Wood had shown proof of his qualifications for a job at Walsh, it does not make clear whether these qualifications were considered with reference to the group classifications system or to the special skills provision. As respondent concedes Wood's special skills with respect to the Walsh job, and plainly knew of them at least as early as February 12, 1960, it would appear more likely that Wood's qualifications other than his special skills were at issue. Moreover, it does not appear that the Appeals Committee considered Wood's case with reference to the contention at issue here—that the Union's refusal to refer him was based on his membership in a railroad local. For all these reasons, we submit, the Board was well within its discretion in refusing to give controlling weight to the Appeals Committee decision in question. As the Seventh Circuit said in *N.L.R.B.* v. *International Union United Auto Workers,* 194 F. 2d 698, 702, in rejecting the union's contention that an order of the Wisconsin Employment Relations Board and several arbitration decisions precluded the National Labor Relations Board from finding a violation:[7]

> This argument cannot be sustained in view of Section 10(a) of the Act * * *. Thus the Act confers upon the Board exclusive jurisdiction to prevent unfair labor practices within the meaning of the statute. The Board's ex-

[7] See also, *N.L.R.B.* v. *Walt Disney Productions*, 146 F. 2d 44 (C.A. 9); *N.L.R.B.* v. *Bell Aircraft Corp.*, 206 F. 2d 235 (C.A. 2); *Monsanto Chemical Co.*, 97 NLRB 517, enf'd 205 F. 2d 763 (C.A. 8).

clusive function in this field may not be displaced by action before State agencies or by arbitration.

CONCLUSION

For the reasons stated, it is respectfully submitted that a decree should issue enforcing the order of the Board in full.

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DECEMBER 1961.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day fol-

lowing the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom

membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

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